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**Federal Communications Commission**  
**Office of the Secretary**

**Appendix A .....Overview of Media Planning**

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## **Overview of Media Planning**

**by Kofi A. Ofori**

Advertisements are delivered to consumers via a media mix of newspapers, television, cable TV, radio and magazines. Radio is just one of many mass media vehicles that are capable of delivering an advertisement message. An important role for the media planner is to determine when radio should be utilized based upon its entertainment or informational appeal to consumers. In conjunction with ad agencies, media planners also determine which radio format(s) are optimally suited to convey an advertisement to the targeted audience. Hence, decisions made by media planners, ad agencies, and other marketing executives determine the fate of radio stations in a very practical way.

The process of media planning, however, does not begin with media buying. Determining the role of radio in a media mix is the outcome of a series of decisions that begins with an assessment of the marketing problem (e.g. company sales have been slipping due to increased market penetration by a competitor). Next, a marketing strategy is devised followed by the adoption of a creative strategy. Media planners have very little to do with the development of these components of the media plan. Usually marketing and marketing research people conduct the situation analysis and prepare the market plan. Copywriters and art directors are responsible for the creative strategy.

Media planners begin their work once the marketing plan is in place and focus upon developing the media objectives and overseeing media buying.

The following is intended to provide an overview of the decision-making process involved with media planning. It will also explain the practice of buying commercial time on radio formats that have audience demographics that match those of the target market.

### **Media Planning in Six Steps**

The goal of media planning is to link media buying decisions with marketing objectives. If advertisers and ad agencies neglect marketing objectives when buying commercial time, money is spent ineffectively. Media buying should be the end result of a logical sequence of steps that begins with an assessment of the advertisers marketing problems, a set of marketing objectives that address the problems identified, a profile of the consumer target, and a media mix and creative theme that will deliver the targeted consumer.

The following table illustrates a logical sequence of steps that should be involved with media planning.

### Logical Progression of Steps in Media Planning

1. Marketing Objectives	2. Marketing Strategies	3. Media Objectives	4. Media Strategies	5. Decisions Implementing Strategies (Tactics)	6. Media Buying
A number of marketing goals for a given brand, presumably, based on best opportunity for sales or solving other marketing problems.	A number of broadly conceived marketing decisions, organized into a unified plan of action aimed at attaining marketing objectives.	A number of media goals, all related in some way to helping attain market objectives, or related to marketing strategy.	A number of broadly conceived media decisions, organized into a unified plan of action aimed at attaining media goals.	A number of very specific decisions that implement the media strategy. In many instances, these decisions serve as a basis for media buying.	Actual purchasing decisions involving the selection and use of media.
Example	Example	Example	Example	Example	Example
Increase brand share of market by 5 percent over last year, nationally.	Concentrate on winning customers from competitors by using ads that show ways in which our brand is better than theirs.	Plan media selections to deliver at least 80 percent of both our and competitors target markets (targets are defined demographically).	Frequency goal: 4.5 use network TV, day and late fringe, spot TV in top 30 markets. Use: 30s. Buy 600 gross ratings points in spot markets.	Eliminate newspapers, spot radio, spot TV, and billboards from consideration. Use network TV or magazines. Find which gives 80 percent net reach of target at lowest cost per thousand.	Make purchase of best alternative media according to the specifications laid down in strategy and tactical plans, and according to any other specifications (e.g. creative requirement)

In practice, however, media buying does not always follow the company's plan. For example, cost considerations may overshadow objectives set forth in the media plan. Or, the so-called "media plan" may merely consist of a set of loosely organized decisions. In such instances, the interests of the advertiser are not well advanced.

### **Matching Media with Targeted Markets**

One of the goals of media planning is to make efficient use of marketing resources. In order to do this, advertisers strive to allocate advertising budgets to media with audiences that closely parallel their target market. The closer the match between a media vehicle and the market target, less money is wasted on delivering messages to consumers for whom the product is not intended. Hence the need to match market targets with appropriate media vehicles.

During the past decade, market research has become increasingly sophisticated in terms of identifying targeted markets. Three types of variables are used to define a market target: demographics, socio-psychological and product usage. Demographic variables include age, sex, race, income, education, occupation, marital status, family size, locality etc. As the number of demographic descriptors increases the more narrow the target market. Marketing executives strive to achieve a balance between precision and size, such that the market is not so narrowly defined that it excludes a significant number of people likely to buy the product.

Under the socio-psychological umbrella there are lifestyle and psychological variables. Psychological characteristics include leadership, compulsive, aggressive, conformist behavior, and need achievement. Such data enable copywriters to create a message that appeals to a consumer's psyche. Lifestyle data tells an advertiser how a prospective customer uses their leisure time, what kind of entertainment they enjoy, and the extent of their community involvement.

Product usage variables generally fall into four segments: heavy users, medium users, light users, and non-users. Market objectives that seek to increase consumption find product usage data especially useful. There are no hard and fast rules for guiding advertisers about whether to pursue heavy, light or non-users. Industry growth or a brand's position in the marketplace may justify investing in promotion among light and non-users.

Two examples of target market descriptions are:

*Glenfiddich Scotch Whiskey (William Grant & Sons, Inc.)*- males, aged 25 to 49, with household incomes of \$40,000 or more. In addition, they are people who are constantly searching for "premium" products, new experiences. They love challenges and new experiences. An important characteristic of these customers is that they believe they have specific criteria for judging the quality of Scotch whiskey. They believe they can accurately evaluate the

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"smoothness" of Scotch whiskey, and that smoothness is a surrogate for quality.

*Long Term Disability Insurance (New York Life Insurance Company)* – "male, white-collar professionals, between the ages of 25 and 45, who understand that illness, not an industrial accident, is the biggest threat to family breadwinners."<sup>1</sup>

In addition to market research on product consumption, millions of dollars are spent annually to obtain profiles on the viewing/listening habits of consumers. The following profile, prepared by Mediamark Research, Inc. (MRI), describes the media habits of frequent flyer travelers.

Demographics: males age 25 to 54

Product Usage: flying 6 or more times per year

Media Habits:

*More likely to*

*Listen to:*

Adult Contemporary, All News, Classic Rock, Classical, News/Talk

*Read magazines on:*

business, computers, cities, news, science, sports, travel

*Watch:*

baseball specials, basketball specials, news, general drama primetime, golf or tennis,

*Own home computer*

*Drink imported beer*

*Own American Express Gold Card*

*Less likely to*

*Listen to:*

Album-oriented rock (AOR), Country

*Read magazines on:*

fishing, mechanics

*Watch:*

adventures/westerns, comedy/variety pageants, detective/suspense, situation comedies,

*Own truck*

*Drink domestic Beer*

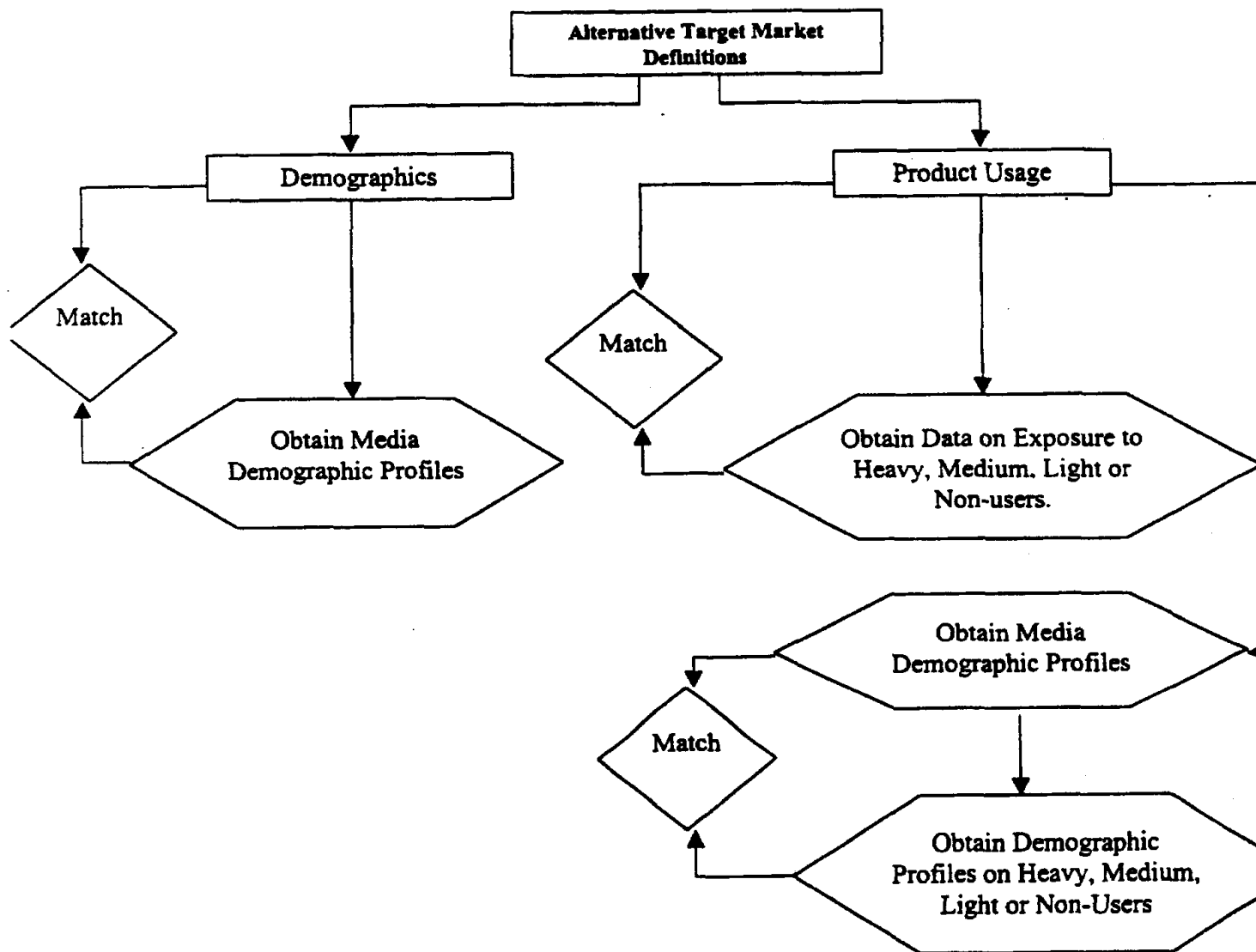
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1. See, James W. Taylor, *How to Develop a Successful Advertising Plan*, NTC Business Books (1993) at 75.

In order to make cost efficient use of the media, the characteristics of various radio and television audiences are compared with the target market definition in order to come up with an appropriate match.

As summarized by the following diagram, different approaches are used to link market targets with related media.

**Diagram A. Alternative Approaches to Matching Media with Market Prospects**



See: Essentials of Media Planning, Second Edition, NTC Business Books 1987.

The approaches include: a) selecting the station(s) whose audience most closely approximates a demographic profile (e.g. white, male, college educated); b) selecting the station that is listened to by a targeted audience defined in terms of product usage (e.g. heavy and moderate users); and 3) ascertaining the demographic profiles of the radio audience and match them with the demographic profiles of heavy, medium, light or non-users.

### Buying Radio

Although radio does not offer the visual impact of television, it does offer advertisers the ability to reach targeted audiences with frequency and at relatively lower cost. Radio is more local oriented compared to television. During 1995, nearly 95 percent of radio's advertising dollars came from spot sales bought on individual stations on a market-by market basis. Levels of radio and television listening also complement each other; radio listening is at its highest in the morning, while TV's highest listening is in the evening.

Both radio and television contain formatted programming (e.g. daytime serials, games, sports and news for TV versus urban, country, classical, rock for radio). Radio, however, maintains a consistent format throughout the broadcast day, and therefore tends to attract a loyal audience following. Radio is useful to advertisers interested in targeting specific consumers and taking advantage of the local appeal of the medium.

In order to buy commercial time the media planner must know: a) the market and media objectives; b) the demographics and other variables concerning the target market; c) the number of people to be reached with the advertisement (**reach**); d) how often they are to be reached (**frequency**), e) the time periods, and f) the budget.

**Reach** is generally expressed as a percentage of the number of individuals or homes in the community (e.g. forty percent of the New York market) and denote the number of different people exposed at least once to an advertisement within a given time period. **Frequency** is the average number of times that individuals (or homes) are exposed to the advertisement.

**Reach** multiplied by **frequency** equals the duplicated percentage of the audience that will be reached, commonly referred to as the **gross rating point (GRP)**. If, for example, the population base of a community is 10 million, and 7.5 million people, or 75 percent, receive on average three exposures to an advertisement, the **GRP** is 225% ( $3 \times 75\% = 225\%$ ).

One additional kind of information required by the media planner is the **continuity**, the timing of the media scheduling. This could be either constant or periodic advertising throughout the

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campaign period.

The following example summarizes the information needed by the media buyer.:

Media Objective	Reach and Frequency	Continuity
Concentrate message delivery toward users of dry cat food, with primary emphasis on women, age 25 to 54, who live in metro city and suburban areas, and who have household incomes of 20,000+. The psychographic profile includes current user of Brand C who have high emotional involvement with their cats, consider their cats as a good friend or companion, and take pride in and get satisfaction from their cats	Achieve a minimum level of 75 % reach against the target market with an average frequency of 3.0 over an average four-week period. The GRP target is 225.	Maintain competitive levels of frequency throughout the year in an effort to work in conjunction with flat seasonality.

Armed with this information a buyer is prepared to enter negotiations for the purchase of commercial time. Given a GRP target, a buyer examines the ratings and formats of all the radio stations in a particular market. The ratings of the stations selected to carry the advertisement must total the GRP target. Secondly, the demographics of the station's listeners must be consistent with those of the targeted market.

Ratings, like GRPs, are a percentage and simply indicate the proportion of individuals in a community that are tuned to a particular station. In the following example, each of the radio stations have a rating ranging from 3 to 8 percent. The rating of each station multiplied by the number of announcements provides each station's contribution towards the overall target of 225 GRPs.



Table A			
	Ratings (%)	# Announcements	GRPs (%)
Station A	4	9	36
Station B	5	10	50
Station C	5	9	45
Station D	4	6	24
Station F	8	5	40
Station G	6	5	30
Totals		44	225

In order to keep the cost of a media campaign within budget constraints, buyers often calculate the **cost-per-rating point**, or what it costs to advertise to 1 percent of the audience within a given market. The **cost-per-rating point** is an estimate that varies from market to market and from station to station. As a preliminary idea of the cost of commercial time, it enables a buyer to estimate how many people they can reach for a given budget. The **cost-per-rating point** is also a starting point for negotiations with radio stations.

Sources for the **cost-per-rating point** for particular markets are estimator books published by advertising agencies and other organizations.<sup>2</sup> Other factors that influence the final price of advertising time include daypart, ratings, discounts, preemption,<sup>3</sup> and program format.

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2 . Examples include Media Market Guide published quarterly by Media Market Resources, Inc

3 . Preemptible spot discounts can be purchased with the understanding that the commercial can be preempted by another advertiser paying the full price.

Station format and ratings, more than any other factors, determine whether a station will be included in a buy. Formats consist of entertainment and informational programming designed to appeal to a particular audience segments (e.g. upscale young adults). The buyer will be concerned about whether the format of a particular station appeals to consumers who use their products or can be persuaded to use their products. If not, the station may be excluded from the buy or bought for a lower price. Stations, advertisers and ad agencies invest heavily in qualitative research that provide demographic, lifestyle and product usage data about radio audiences according to format. Examples of services that provide such data are the Media Audit<sup>4</sup> and Scarborough.<sup>5</sup>

By definition gross ratings points only specify a level of exposure to a station's signal; it does not adjust for multiple exposures to an advertisement. Therefore, when buyers are negotiating a final price the central concern is how many *different* people will hear the advertisement. **Cume rating**, or the *unduplicated* size of a radio station's audience, has a great bearing upon the buying decision-making process. Data on levels of listening for radio stations are provided by companies that also publish qualitative data (e.g. The Arbitron Company).

In theory, the cost of radio buys is fixed. Stations have rate cards that list the price of commercial time based upon the length of the advertisement (e.g. 30 sec., 60 sec.). Some prices permit preemption while others are guaranteed. Published discounts permit cost savings based upon volume purchases, daypart, and two or more station combination purchases.

In practice, the cost of commercial time is negotiated. Rate cards serve as mere guidelines. Typical negotiations between buyers and radio station salespeople begin with a discussion of the **cost-per-rating point**. The **cost-per-rating point** approach permits the buyer to concentrate upon achieving a particular **reach** objective. Assuming, for example, that the **cost-per-rating point** for the Detroit market is \$300 (i.e. \$300 to reach 1 percent of the population), then the budget for achieving a GRP target of 225, as illustrated in Table A, would be \$67,500.

The buyer will entertain bids from all stations in a market that have listening audiences with demographics that approximate the target market before making a decision. The buyer will negotiate for the least amount of money for the commercial time. Station salespeople seek to get the highest price without disclosing their total amount of inventory (thus preventing the buyer from knowing how low a price the commercial time is worth). After receiving price bids from several stations, the

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4 . Published by International Demographics, Inc.

5 . Published by The Arbitron Company.

buyer may negotiate for lower prices or certain types of promotional concessions. The latter might consist of a sweepstakes contests or remote site broadcasts from the advertiser's place of business. Once all of the complex set of factors, including daypart, are evaluated the final prices and terms are agreed to and the buy is made.

#### **Buying Time on Minority Formatted Radio**

A small percentage of the commercial time that is purchased on stations that target the Hispanic and Black audiences is bought on the basis of the Hispanic or Black cost per rating point. Costs per rating points for Hispanic and Urban formatted radio are published by The Arbitron Company. Normally, the price paid for an advertisement is based upon a station's rating for an entire metro market. The Hispanic and Black rating point is based upon a station's rating for the Hispanic or Black population.

For example, urban formatted station WXYZ may have low penetration for an entire metro market which may include surrounding suburbs and extend to neighboring states. But its rating for the Black population, concentrated in the urban neighborhoods, may be very high. Cost per rating point, as discussed earlier, is what it costs to advertise to one percent of the population. Therefore, the cost to advertise to one percent of the entire metro market versus one percent of the Black audience is based upon entirely different population bases. The Black population base may be relatively small, but the ratings for an urban formatted station for the Black population may be very high. It is not unusual for a station to reach 30 percent of the entire metro market and 80 percent of the Black market.

The actual number for the Black cost per point may be low compared to the general market cost per point. But, because a station, such as WXYZ, has many more rating points for the Black population, the price that it will receive for a 60 second spot is equal to if not greater than one based upon the general market cost per point. Purchases based upon the Black cost per point are estimated to account for only five to ten percent of the advertisement revenues of urban formatted stations.

The body of this study concerns the remaining 90 percent of minority formatted revenues which are reported to be discounted to a substantial degree.

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### **References**

1. Arnold M. Baran et al., **Essentials of Media Planning**, NTC Business Books (2<sup>nd</sup> ed. 1987)
  2. Anthony F. McGann, J. Thomas Russell, **Advertising Media**, Irwin (2<sup>nd</sup> ed. 1988)
  3. Helen Katz, **The Media Handbook**, NTC Business Books, (1995)
  4. Jack Z. Sissors, Lincoln Bumba, **Advertising Media Planning**, NTC Business Books (3<sup>rd</sup> ed. 1989)
  5. Jim Surmanek, **Media Planning: a Practical Guide**, NTC Business Books (1986)
  6. James W. Taylor, **How to Develop a Successful Advertising Plan**, NTC Business Books (1993)
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**Appendix B .....Relevant Provisions from the Communications Act of 1934, as  
Amended; Non-Discrimination in Advertising Act of 1991**

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104TH CONGRESS }  
2d Session

COMMITTEE PRINT

{ COMMITTEE  
PRINT 104-L

COMMUNICATIONS ACT OF 1934  
AS AMENDED BY  
THE TELECOMMUNICATIONS ACT OF 1996

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PREPARED FOR THE USE OF THE  
COMMITTEE ON COMMERCE  
U.S. HOUSE OF REPRESENTATIVES



MARCH 1996

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**SEC. 257. [47 U.S.C. 257] MARKET ENTRY BARRIERS PROCEEDING.**

(a) **ELIMINATION OF BARRIERS.**—Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) **NATIONAL POLICY.**—In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) **PERIODIC REVIEW.**—Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

## COMMUNICATIONS ACT OF 1934, AS AMENDED

AN ACT To provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I—GENERAL PROVISIONS

#### SEC. 1. [47 U.S.C. 151] PURPOSES OF ACT, CREATION OF FEDERAL COMMUNICATIONS COMMISSION.

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

#### SEC. 2. [47 U.S.C. 153] APPLICATION OF ACT.

(a) The provisions of this act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this Act shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in title VI.

(b) Except as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any



carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of an other carrier not directly or indirectly controlling or controlled by or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

**SEC. 3. [47 U.S.C. 153] DEFINITIONS.**

For the purposes of this Act, unless the context otherwise requires—

(1) **AFFILIATE.**—The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(2) **AMATEUR STATION.**—The term "amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(3) **AT&T CONSENT DECREE.**—The term "AT&T Consent Decree" means the order entered August 24, 1962, in the anti-trust action styled *United States v. Western Electric*, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1962.

(4) **BELL OPERATING COMPANY.**—The term "Bell operating company"—

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell

(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States.

(e) The Commission may—

(1) authorize the use of private organizations for testing and certifying the compliance of devices or home electronic equipment and systems with regulations promulgated under this section;

(2) accept as prima facie evidence of such compliance the certification by any such organization; and

(3) establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification.

**SEC. 303. [47 U.S.C. 303] GENERAL POWERS OF COMMISSION.**

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* that changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l)(1) Have the authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States, except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.

(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension or cancellation of any such authorization.

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) Has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) Has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) Has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) Has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) False or deceptive signals or communications; or

(2) A call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) Has willfully or maliciously interfered with any other radio

(F) Has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1), or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the purposes of this Act or any international

radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

(u)<sup>1</sup> Require that apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term "direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(w)<sup>2</sup> Prescribe—

(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children: *Provided*, That nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.

<sup>1</sup> Subsection (u) was added by the Television Decoder Circuitry Act of 1990, Public Law 101-431, approved Oct. 15, 1990, 104 Stat. 961. This subsection takes effect on July 1, 1993.

<sup>2</sup> This subsection was enacted by section 551(b)(1) of the Telecommunications Act of 1996 (P.L. 104-190).

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

#### SEC. 304. [47 U.S.C. 304] WAIVER BY LICENSEE.

No station license shall be granted by the Commission until the applicant therefore shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

#### SEC. 305. [47 U.S.C. 305] GOVERNMENT-OWNED STATIONS.

(a) Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Act. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

(b) All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Commission.

(c) The provisions of sections 301 and 303 of this Act notwithstanding, the President may, provided he determines it to be consistent with and in the interest of national security, authorize a foreign government, under such terms and conditions as he may prescribe, to construct and operate at the seat of government of the United States a low-power radio station in the fixed service at or near the site of the embassy or legation of such foreign government for transmission of its messages to points outside the United States, but only (1) where he determines that the authorization would be consistent with the national interest of the United States and (2) where such foreign government has provided reciprocal privileges to the United States to construct and operate radio stations within territories subject to its jurisdiction. Foreign government stations authorized pursuant to the provisions of this subsection shall conform to such rules and regulations as the President may prescribe. The authorization of such stations, and the renewal, modification, suspension, revocation, or other termination of such authority shall be in accordance with such procedures as may be established by the President and shall not be subject to the other provisions of this Act or of the Administrative Procedure Act.

#### SEC. 306. [47 U.S.C. 306] FOREIGN SHIPS.

Section 301 of this Act shall not apply to any person sending radio communications or signals on a foreign ship while the same

nications or signals, shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this Act.

**SEC. 307. [47 U.S.C. 307] ALLOCATION OF FACILITIES; TERM OF LICENSES.**

(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

**(c) TERMS OF LICENSES.—**

(1) **INITIAL AND RENEWAL LICENSES.**—Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

(2) **MATERIALS IN APPLICATION.**—In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts which it deems necessary to make its findings.

(3) **CONTINUATION PENDING DECISION.**—Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.

(d) No renewal of an existing station license in the broadcast or the common carrier services shall be granted more than thirty days prior to the expiration of the original license.

(e) (1) Notwithstanding any license requirement established in this Act, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation

radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this Act and with rules prescribed by the Commission under this Act.

(3) For purposes of this subsection, the terms "citizens band radio service", "radio control service", "aircraft station" and "ship station" shall have the meanings given them by the Commission by rule.

**SEC. 308. [47 U.S.C. 308] APPLICATIONS FOR LICENSES; CONDITIONS IN LICENSE FOR FOREIGN COMMUNICATION.**

(a) The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: *Provided*, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds, in the nonbroadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant construction permits and station licenses, or modifications or renewals thereof, during an emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and without the filing of a formal application, but no authorization so granted shall continue in effect beyond the period of emergency or war requiring it: *Provided further*, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such licenses, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of

(G) **EFFECTIVE DATE.**—This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1934, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(k) **BROADCAST STATION RENEWAL PROCEDURES.**—

(1) **STANDARDS FOR RENEWAL.**—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) **CONSEQUENCE OF FAILURE TO MEET STANDARD.**—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) **STANDARDS FOR DENIAL.**—If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) **COMPETITOR CONSIDERATION PROHIBITED.**—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

**SEC. 310. [47 U.S.C. 310] LIMITATION ON HOLDING AND TRANSFER OF LICENSES.**

(a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

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## NonDiscrimination in Advertising Act of 1991 (Introduced in the House)

58925 [UPDATE]

HR 285 IH

102d CONGRESS

1st Session

H. R. 285

To amend the Internal Revenue Code of 1986 to deny deductions for expenses of advertising to persons who discriminate against minority owned or formatted communications entities in the purchase or placement of advertisements, and to permit persons aggrieved by such discrimination to bring civil actions to recover lost profits and other appropriate damages.

### IN THE HOUSE OF REPRESENTATIVES

January 3, 1991

Mrs. COLLINS of Illinois introduced the following bill; which was referred jointly to the Committees on Ways and Means and the Judiciary

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#### A BILL

To amend the Internal Revenue Code of 1986 to deny deductions for expenses of advertising to persons who discriminate against minority owned or formatted communications entities in the purchase or placement of advertisements, and to permit persons aggrieved by such discrimination to bring civil actions to recover lost profits and other appropriate damages.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

SECTION 1. This Act may be cited as the 'NonDiscrimination in Advertising Act of 1991'.

### SEC. 2. DENIAL OF DEDUCTION FOR EXPENSES OF ADVERTISING TO





(1) wire communication (as defined in section 3(a) of the Communications Act of 1934 (47 U.S.C. 153(a))),

(2) radio communication (as defined in section 3(b) of the Communications Act of 1934 (47 U.S.C. 153(b))), or

(3) print communication.

(c) ENFORCEMENT BY PRIVATE RIGHT OF ACTION- Any person aggrieved by a violation of subsection (a) may bring a civil action on behalf of the person and other persons similarly situated.

(d) JURISDICTION- The United States district courts shall have exclusive jurisdiction of any original action brought under subsection (c).

(e) ENTITLEMENT TO RELIEF- Any person aggrieved by a violation of subsection (a) may recover lost profits, consequential damages, and all other appropriate relief to make the person whole, including reasonable attorneys' fees. The court shall, in the case of any person aggrieved by a willful and wanton violation of subsection (a), treble the amount recovered under the preceding sentence.

#### SEC. 4. EFFECTIVE DATE.

(a) DENIAL OF DEDUCTION FOR EXPENSES OF ADVERTISING- The amendment made by section 2 shall apply to expenses paid or incurred after the date of the enactment of this Act in taxable years ending after such date.

(b) PROHIBITION AGAINST DISCRIMINATION; PRIVATE RIGHT OF ACTION- Section 3 shall apply to conduct occurring after the date of the enactment of this Act.

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137 Cong.Rec. E32-02			CR
1991 WL 14350 (Cong.Rec.)			
(Cite as: 137 Cong. Rec. E32-02)			

Congressional Record --- Extension of Remarks  
Proceedings and Debates of the 102nd Congress, First Session

Material in Extension of Remarks was not spoken by a Member on the floor.

In the House of Representatives  
Thursday, January 3, 1991

**\*E32 REINTRODUCTION OF THE NON-DISCRIMINATION IN ADVERTISING ACT**

HON. CARDISS COLLINS OF ILLINOIS

Thursday, January 3, 1991

Mrs. COLLINS.

Mr. Speaker, today, I am reintroducing the Non-Discrimination in Advertising Act, legislation designed to correct a serious injustice being perpetrated against black and other minority-owned and formatted broadcast stations. Black broadcasters have long charged that advertising agencies discriminate against minority-owned radio stations in their placement of advertising. Minority broadcast owners also have said that the resulting loss of advertising is undermining their financial viability.

Last year, I requested that GAO conduct a study of the Federal Government's use of minority-owned ad agencies and broadcast stations. Their review showed that the Department of Defense, which accounts for about 95 percent of Federal advertising, has consistently failed to comply with Federal procedures regarding contracting with minority-owned media and advertising companies. This GAO report was requested after I heard from numerous minority broadcasters and advertising agencies that charged that the Federal Government was snubbing them when looking for advertising agencies and vehicles on which to run its ads.

According to the National Association of Black-Owned Broadcasters, black-owned radio and television stations, print media, and black-owned advertising agencies are subjected to systematic discrimination. Ad agencies and their clients are refusing to advertise in media owned by blacks and other minorities. This means that in many cases Black media are being bypassed for advertising placement, even though they possess higher numbers in groups being targeted by the ad agency. Black-owned advertising agencies are also singled out because they are presumed to have expertise in appealing to black audiences.

The express purpose of the legislation which I am introducing today is to

137 Cong.Rec. E32-02

(Cite as: 137 Cong. Rec. E32-02, \*E32)

provide black and other minority station owners with a mechanism for redress. Specifically, the legislation would: Deny income tax deductions for persons who discriminate against minority-owned or formatted communications entities-radio, TV and print-in the purchase or placement of advertising; require the IRS to determine whether a person has engaged in discriminatory conduct; allow the aggrieved party to bring a civil suit; and permit a court to assess treble damages in cases of "willful and wanton" discrimination.

I believe denying tax deductions for advertising expenses will reach the largest advertising agencies and their clients. The write-off of ad expenses is a significant portion of all advertising expenditures. By disallowing this deduction, my bill will place the largest penalties on the largest offenders. Advertising agencies and their clients will find it very expensive not to comply with this act.

Black-owned communications media face many obstacles in operating their businesses-obtaining needed financing, constructing facilities, servicing debt and employing personnel-not the least of which is their inability to secure advertising dollars. This bill is an effective tool to be used to provide minority station owners with a way to protect their investment.

I urge my colleagues to support me in this legislation.

137 Cong. Rec. E32-02, 1991 WL 14350 (Cong.Rec.)

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